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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,926	09/19/2003	Tapani Levola	915-005.070	6460
4955	7590	05/04/2005	EXAMINER WONG, ERIC K	
WARE FRESSOLA VAN DER SLUYS & ADOLPHSON, LLP BRADFORD GREEN BUILDING 5 755 MAIN STREET, P O BOX 224 MONROE, CT 06468			ART UNIT 2883	PAPER NUMBER

DATE MAILED: 05/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/666,926

Applicant(s)

LEVOLA, TAPANI

Examiner

Eric Wong

Art Unit

2883

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413) .<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)               |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>0903</u> . | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### *Priority*

1. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d).

### *Claim Objections*

2. Claims 1 and 9 are objected to as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant claims a light transmissive electrode. However, the specification only discloses a light transparent electrode. Examiner has examined the case based upon a light transparent electrode.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-14 are rejected under 35 U.S.C. 102(e) as being anticipated by United States Patent Application Publication 2004/0218137 to Lee et al.

Lee et al. discloses an optical device comprising:

- A light transmissive planar waveguide substrate;
- A pre-formed diffractive grating structure made from an electrically deformable layer (laminated grating films are disclosed);

Art Unit: 2883

- A first and second transparent electrode (12, 22); and
- A control means for applying voltage between the electrodes and a dielectric gap (paragraph 57).

As to claim 2, the voltage source deforms the grating layer to change the refractive properties.

As to claims 3-4, the deformation of the surface layer is adjusted to produce desired diffraction properties for given wavelengths of the light wave (see Figure 7).

As to claim 5, photo-reactive resin is used (paragraph 49).

As to claims 7-8, electrodes are planar and multiple pixels may be used with this structure to contain multiple electrodes.

As to claim 9, the electrodes are transparent.

As to claims 10-11, the arrangement alters the diffraction of light.

As to claims 12-14, the device is arranged to enlarge the exit pupil and to accommodate various viewing angles (paragraph 58 and 61).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al. as applied to claim 1 above.

Art Unit: 2883

Lee et al. discloses a grating that has a structure that is variable depending on the applied voltage with a dielectric gap inbetween, but fails to explicitly disclose a dielectric gap made of air, gas or vacuum.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use air, gas or a vacuum, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. By merely using air or gas in place of the dielectric disclosed by Lee et al. would be general engineering practice to provide the proper materials for the type of display to be produced (ie. LCD, OLED, etc). Examiner's contention of this obvious choice in design can be overcome if applicant establishes unexpected results by arranging the dielectric gap with the materials used as claimed.

#### ***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on 09/19/2003 has been considered by the examiner and made of record (note the attached copy of form PTO-1449).

#### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a. United States Patent Number 6,747,285 to Schueller et al. for a reconfigurable diffraction grating.

b. United States Patent Number 5,771,321 to Stern for a tunable diffraction grating actuated by electrodes.

Art Unit: 2883

- c. United States Patent Number 6,188,462 to Lavrentovich et al. for a diffraction grating with electrically controlled periodicity.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Wong whose telephone number is 571-272-2363. The examiner can normally be reached on Monday through Friday, 830AM - 430PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frank Font can be reached on 571-272-2415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



EW



Frank G. Font  
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